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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 2nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 3 August 1999, at 10 a.m.

Chairman: Mr. HATANO

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* The summary record of the second part (closed) of the meeting appears as document E/CN.4/Sub.2/1999/SR.2/Add.1.

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GE.99-14437 (E)

The meeting was called to order at 10.05 a.m.

ORGANIZATION OF WORK (agenda item 1) (continued) (E/CN.4/Sub.2/1999/OD.2)

(c) METHODS OF WORK OF THE SUB-COMMISSION (continued) (E/CN.4/Sub.2/1999/2 and 3)

1. The CHAIRMAN drew attention to the draft timetable for the consideration of agenda items proposed by the Bureau (E/CN.4/Sub.2/1999/OD.2).

2. The Bureau had decided on the establishment of an open-ended sessional working group on transnational corporations, pursuant to Sub-Commission resolution 1998/8, and of an open-ended sessional working group on the methods of work of the Sub-Commission. Reviewing the background to the establishment of the latter working group, he said that the Commission on Human Rights had adopted a number of resolutions encouraging the compilation of existing guidelines, decisions and any other instruments applicable to the procedures of the Sub-Commission.

3. At the Sub-Commission's forty-ninth session, an open-ended sessional working group had examined and approved the first 38 rules in a working paper on methods of work (E/CN.4/Sub.2/1997/3). That group had not been re-established at the fiftieth session owing to the absence of the author of the working paper, namely himself. The Sub-Commission had, however, decided at that session to consider the new revised working paper (E/CN.4/Sub.2/1999/2) at its fifty-first session on a priority basis in private meetings and to complete its examination thereof at that session. The author of the working paper in question would not be a member of the Sub-Commission at its fifty-second session.

4. The Bureau had decided against the establishment of a sessional working group on the administration of justice at the current session because the main objectives of the working group had already been achieved, including the elaboration of a draft international convention on the protection of all persons from enforced disappearance, which had been transmitted to the Commission. Moreover, no working paper had yet been submitted on the topics of "privatization of prisons" and "capital punishment". The only completed paper was that submitted by Mr. Fix-Zamudio concerning "improvement and efficiency of the judicial instruments for the protection of human rights at the national level and their impact at the international level". The Bureau had furthermore concluded that it would be unduly burdensome for the Sub-Commission to have three working groups at the same session.

5. Mr. JOINET proposed that the Sub-Commission's decision on the matter should state that the working group on the administration of justice was merely being suspended until the next session, when it could replace the working group on the methods of work of the Sub-Commission, which was scheduled to complete its activities at the current session. The working group on the administration of justice had made a valuable contribution to the elaboration of human rights standards and should focus in the future on their implementation, as recommended by the High Commissioner for Human Rights.

6. Mr. ALFONSO MARTÍNEZ said he supported the Bureau's proposals and agreed with Mr. Joinet that the working group on the administration of justice should resume its proceedings at the following session, possibly shifting its attention to the implementation of international standards.

7. Mr. EIDE also supported Mr. Joinet's proposal to suspend the sessional working group on the administration of justice for the current session only and endorsed his comment on the need to address substantive matters in the light of the High Commissioner's advice concerning the Sub-Commission's role in the implementation of standards.

8. Ms. HAMPSON said she wished to emphasize that the suspension of the working group on the administration of justice should be merely temporary, not only for the reasons stated by Mr. Joinet but also because the Sub-Commission could not prejudge developments in the consideration of its agenda item 9.

9. The CHAIRMAN said that the working group would, in any case, resume its proceedings when the papers on the privatization of prisons and capital punishment were submitted.

10. Mr. SIK YUEN proposed that the decision should specifically state that the working group would be reconvened at the next session.

11. Mr. BENGOA expressed surprise at the provision in the draft timetable for seven meetings on the Sub-Commission's methods of work. Such meetings, unlike those devoted to substantive issues, were not particularly productive. Although the Sub-Commission's margin for manoeuvre was restricted by the Commission's injunctions regarding the number of public meetings, he urged the Bureau to organize the meetings on the methods of work in such a way as to enhance their productivity.

12. Mr. FAN Guoxiang said he supported the Bureau's proposals regarding the draft timetable. However, he agreed with Mr. Bengoa that the Sub-Commission should not concern itself solely with procedural matters at the meetings held in closed session but should also address substantive issues.

13. The CHAIRMAN said he took it that the Sub-Commission wished to establish an open-ended sessional working group on transnational corporations under agenda item 4 (c) and an open-ended sessional working group on the methods of work of the Sub-Commission under agenda item 1 (c) and to suspend the proceedings of the sessional working group on the administration of justice for the current session.

14. It was so decided.

15. The CHAIRMAN invited the regional groups to nominate members to serve on the two working groups.

16. Mr. YIMER, speaking on behalf of the African experts, nominated Mr. Guissé for the working group on agenda item 4 (c) and Mrs. Warzazi for the working group on agenda item 1 (c).

17. Mr. FAN Guoxiang, speaking on behalf of the Asian experts, nominated Mr. Zhong Shukong for the working group on agenda item 4 (c) and Mr. Hatano for the working group on agenda item 1 (c).

18. Mr. KARTASHKIN, speaking on behalf of the Eastern European experts, nominated Ms. Motoc for the working group on agenda item 4 (c) and Mr. Shamshur for the working group on agenda item 1 (c).

19. Mr. ALFONSO MARTÍNEZ, speaking on behalf of the Latin American experts, nominated Mr. Pinheiro for the working group on agenda item 4 (c) and Mr. Fix-Zamudio for the working group on agenda item 1 (c).

20. Mr. BOSSUYT, speaking on behalf of the Western European and other experts, nominated Mr. Eide for the working group on agenda item 4 (c) and himself for the working group on agenda item 1 (c).

21. Mr. Bossuyt, Mr. Eide, Mr. Fix-Zamudio, Mr. Guissé, Mr. Hatano, Ms. Motoc, Mr. Pinheiro, Mr. Shamshur, Mrs. Warzazi and Mr. Zhong Shukong were elected to the respective working groups by acclamation.

22. The CHAIRMAN said that the working groups would elect their officers at their first meetings.

23. While the working group on agenda item 1 (c) would consider the final working paper on methods of work (E/CN.4/Sub.2/1999/2), the plenary meetings on the same item were expected to focus on the report of the Bureau of the Commission on Human Rights (fifty-fourth session) on the rationalization of the work of the Commission (E/CN.4/1999/104). As all meetings on agenda item 1 (c) were to be held in closed session, pursuant to Sub-Commission decision No. 1998/108, the word "closed" should be inserted in brackets after the references to meetings of the working group in the draft timetable.

24. Mr. JOINET said that, generally speaking, he disapproved of the idea of holding meetings in the absence of the observers for Governments and non-governmental organizations (NGOs). He suggested that the summary records of the closed meetings should be given general distribution.

25. Mr. ALFONSO MARTÍNEZ said that the Sub-Commission was not eternally bound by its previous decisions and could, perhaps, reconsider decision No. 1998/108. He, too, was averse to closed meetings on the grounds that they reduced transparency. However, the records of such meetings must remain confidential and restricted.

26. Mr. VIMER said that the purpose of closed meetings was to enable the members of the Sub-Commission to engage in an uninhibited discussion. That purpose would be defeated by a decision to give the records general distribution. On the other hand, he had no objection to holding the meetings on agenda item 1 (c) in public.

27. Mr. BOSSUYT said he saw no need for the working group to meet in closed session. The Commission had, however, specifically instructed the Sub-Commission to discuss its methods of work in closed session when meeting

as a plenary body. He supported Mr. Joinet's suggestion that the summary records of the meetings held in closed session that dealt with its methods of work should be given general distribution.

28. The CHAIRMAN said that, if the sessional working group held public meetings, the Sub-Commission would exceed the maximum number of 30 public meetings allotted to it by the Commission.

29. Mrs. WARZAZI proposed that the Sub-Commission should decide, in an initial closed meeting, how best to proceed subsequently. One way of avoiding the problem of coverage in summary records would be for the chair of the working group to make an oral presentation on the outcome of the working group's closed meetings.

30. Mr. ALFONSO MARTINEZ said that paragraph 8 of Commission resolution 1999/81 did not specify whether the Sub-Commission was to discuss its methods of work in public meetings or in closed session.

31. Mr. JOINET said that the Economic and Social Council was the only body empowered to amend the Sub-Commission's methods of work. Under rule 39 of the rules of procedure of the functional commissions of the Economic and Social Council, the Sub-Commission had to hold its meetings in public unless it itself decided otherwise. Thus, in authorizing the Sub-Commission to hold no more than 30 public meetings, and in deciding that it was to meet in closed session for certain purposes, the Commission was acting ultra vires.

32. The CHAIRMAN urged the members to concentrate on the question whether the sessional working group should hold public meetings or meet in closed session.

33. Mrs. DAES proposed that the Sub-Commission should amend its decision No. 1998/108 that the working group should meet in closed session. She asked the Secretariat to circulate copies of all decisions affecting the Sub-Commission adopted by the Economic and Social Council at its most recent session.

34. Mr. YIMER said he took exception to Mr. Joinet's assertion that the Commission was acting ultra vires. The Commission was the Sub-Commission's parent body, and should not be defied. He failed to see how paragraph 9 of resolution 1999/81 could possibly be interpreted as a recommendation. Regardless of the problems it posed, the Sub-Commission had to accept the Commission's decision.

35. Mr. JOINET said he would be willing to abide by a decision of the Legal Counsel on the matter.

36. Mr. ALFONSO MARTINEZ said that a decision by the Sub-Commission to amend its previous decision was not incompatible with the Commission's instructions in resolution 1999/81. In any case, general distribution of the summary records of closed meetings was not an option.

37. Mr. KARTASHKIN said that paragraph 9 of Commission resolution 1999/81 required the Sub-Commission to consider questions of its working methods in closed session. The Sub-Commission should respect the decision of its parent body.

38. Mr. BOSSUYT, supported by Mr. Joinet, said he formally proposed suspending the discussion under rule 49 of the rules of procedure, and turning to the remaining issues relating to the meeting of the Bureau.

39. The CHAIRMAN said he took it that the Sub-Commission wished to defer further consideration of agenda item 1 (c) and, to continue it in closed session.

40. It was so decided.

41. The CHAIRMAN drew attention to the footnote to the draft timetable, which stated that consultations prior to the voting would be held in closed session, if deemed necessary.

42. Mr. ALFONSO MARTINEZ said he was concerned that the last-minute consultations referred to might come to be regarded as a substitute for the informal consultations that normally preceded the submission of a draft decision.

43. Mrs. WARZAZI said that the footnote was redundant.

44. Mr. PINHEIRO (Rapporteur) said that, while he endorsed the comment by Mr. Alfonso Martínez, he favoured retaining the footnote.

45. Mr. JOINET proposed that the footnote be deleted since it would institute a procedure that might jeopardize the transparency of the voting process.

46. Mr. WEISSBRODT said that experience showed that such consultations could sometimes be helpful, if used with discretion.

47. Mr. KARTASHKIN said that it was a matter of the discretion of the members of the Sub-Commission whether or not to hold prior consultations in closed session; members would still have that right whether or not the footnote were retained. The footnote could be deleted on the understanding that any member could, at any time, propose the holding of consultations prior to the voting in closed session.

48. The CHAIRMAN suggested that the footnote be deleted on the understanding that the chair could, at any time, call for a closed session to be held for consultations prior to voting.

49. It was so decided.

50. The CHAIRMAN said that, with respect to speaking time, the Bureau had taken previous practice fully into account as well as the guidelines that had been adopted in 1992 and 1994. Members of the Sub-Commission would be limited to 15 minutes per item (for one or more statements); special rapporteurs

to 20 minutes (to be divided between the introduction of the report and the concluding remarks); Government observers to one statement of 10 minutes per item - except for the agenda item dealing with violations of human rights - and 15 minutes for composite items, and 5 minutes for statements made immediately before a vote in which the country concerned was implicated; statements by Government observers equivalent to a right of reply were limited to 5 minutes for the first statement and 3 minutes for the second; observers for intergovernmental organizations, United Nations bodies, specialized agencies and other organizations were limited to the same speaking time as Government observers; and NGO observers were limited to one statement of 10 minutes per item - except for the agenda item dealing with violations of human rights - and 15 minutes for composite items or joint statements.

51. The draft timetable, as amended, and the proposals of the Bureau concerning speaking time were adopted.

TRIBUTE TO THE MEMORY OF NEELAN THIRUCHELVAM

52. Mr. PALIHAKKARA (Observer for Sri Lanka), having acknowledged the sentiments already expressed in the Sub-Commission concerning the murder of Neelan Thiruchelvam by the Liberation Tigers of Tamil Eelam (LTTE), said that Dr. Thiruchelvam had been murdered as he was leaving home for his daily work as a human rights defender. An ardent campaigner against the death penalty and a true believer in and practitioner of non-violence, he had worked tirelessly towards a peaceful solution of Sri Lanka's ethnic problems.

53. His death highlighted the immense dangers posed to human rights defenders by ruthless terrorist groups such as the LTTE. It was also a poignant reminder to forums such as the Sub-Commission that supporters of that terrorist group masquerading as accredited representatives were propagating falsehoods and distributing documents with forged signatures. Dr. Thiruchelvam's murder would only strengthen the resolve of the Government of Sri Lanka to bring to fruition the peace process which it had painstakingly pursued with the cooperation of the peace-loving Tamil community and courageous leaders like Dr. Thiruchelvam. Terrorist groups like the LTTE should know that such cowardly acts would not intimidate the peacemakers into abandoning their commitment to find negotiated solutions.

54. Ms. HOLMES (Observer for the United States of America) also paid tribute to Dr. Thiruchelvam, reading out excerpts from a statement issued on 29 July 1999 by her country's Department of State. In that statement, the murder of Dr. Thiruchelvam was condemned in the strongest possible terms.

55. Mr. GOONESEKERE said that Dr. Thiruchelvam had been known to many members of the Sub-Commission, who had respected his integrity and ability. He had dedicated himself to finding solutions, particularly constitutional solutions, to problems not only in his own country but also as far away as South America. He had received great acclamation worldwide for the way in which he approached such problems, and his murder was tantamount to the murder of the principle of moderation and of finding just solutions by peaceful persuasion. His loss was felt by the entire human race.

The public part of the meeting rose at 11.55 a.m.